

XIII through XVI of Colorado's Regulation No. 7, except for Colorado's repeal of section II.D. EPA is disapproving Colorado's repeal of Section II.D and Colorado's revisions to Section XII of Regulation No. 7. EPA is not acting on the provisions in Regulation No. 7 that are designated "State Only."

(i) *Incorporation by reference.*

(A) 5 CCR 1001-5, Colorado Regulation No. 3, "Air Contaminant Emissions Notices," Part A, "Concerning General Provisions Applicable to Reporting and Permitting," Sections II.D.1.m, II.D.1.ee, II.D.1.uu, II.D.1.ccc, II.D.1.ddd, II.D.1.uuu, and II.D.1.eeee, effective January 30, 2009.

(B) 5 CCR 1001-5, Colorado Regulation No. 3, "Air Contaminant Emissions Notices," Part B, "Concerning Construction Permits," Sections II.D.1.k, l, m, and n, effective January 30, 2009.

(C) Letter dated November 18, 2009 from the Office of the Colorado Attorney General, signed by Jerry Goad, to Candy Herring, Office of the Colorado Secretary of State, regarding clerical errors in Regulation No. 7, and those portions of 5 CCR 1001-9, Colorado Regulation No. 7, "Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides)," Section II.C.1 that accompanied such letter, except for the following: the parenthetical phrase "(State Only: Located in any Ozone Nonattainment Area or Attainment Maintenance Area)" at II.C.1; Section II.C.1.a.(v); Section II.C.1.c; and Section II.C.1.d.

(D) 5 CCR 1001-9, Colorado Regulation No. 7, "Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides)," Sections I through XI and XIII through XVI, effective January 30, 2009, except for the following: Section I.A.1.b; Section I.B.1.b; Section I.B.2.b; Section I.B.2.d; Section II.A.12; Section II.C.1; and the repeal of Section II.D.

■ 3. Section 52.350 is amended by adding paragraph (c) to read as follows:

§ 52.350 Control strategy: ozone.

* * * * *

(c) Revisions to the Colorado State Implementation Plan for the 1997 8-hour ozone NAAQS entitled "Denver Metro Area & North Front Range 8-Hour Ozone Attainment Plan," excluding the last paragraph on page IV-1, the first paragraph on page IV-2, the words "federally enforceable" in the second to last paragraph on page V-6, and the reference to Attachment A in the Table of Contents and on page IV-3, as adopted by the Colorado Air Quality

Control Commission on December 12, 2008, and submitted by the Governor to EPA on June 18, 2009.

[FR Doc. 2011-19807 Filed 8-4-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2010-1040; FRL-9448-4]

RIN 2060-AQ82

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is adjusting the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs) as a result of a recent court decision vacating a portion of the rule titled "Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export; Final Rule." EPA interprets the court's vacatur as applying to the part of the rule that establishes the company-by-company baselines and calendar-year allowances for HCFC-22 and HCFC-142b. This action relieves the regulatory ban on production and consumption of these two chemicals following the court's vacatur by establishing new company-by-company HCFC-22 and HCFC-142b baselines and allocating production and consumption allowances for 2011.

DATES: This rule is effective August 5, 2011. While the urgent need for certainty regarding the consumption allowance allocations in the 2011 control period precludes the Agency from considering any adjustments to the consumption allowances allocated in this action, EPA will consider all written comments received by September 6, 2011 to determine whether to issue additional production allowances for the time period covered by this action. Commenters may also submit comments on the issues addressed in this action as they pertain to future control periods.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-1040, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* a-and-r-docket@epa.gov.

- *Fax:* 202-566-1741.

- *Mail:* Docket # EPA-HQ-OAR-2010-1040, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* Docket #EPA-HQ-OAR-2010-1040 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2010-1040. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT:

Luke H. Hall-Jordan by telephone at (202) 343-9591, or by e-mail at hall-jordan.luke@epa.gov, or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation

Branch (6205]), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Protection Web site of EPA's Stratospheric Protection Division at <http://www.epa.gov/ozone/strathome.html> for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

- APA—Administrative Procedure Act;
- CAA—Clean Air Act;
- CAAA—Clean Air Act Amendments of 1990;
- CFC—Chlorofluorocarbon;
- CFR—Code of Federal Regulations;
- EPA—Environmental Protection Agency;
- FR—**Federal Register**;
- HCFC—Hydrochlorofluorocarbon;
- HVAC—Heating, Ventilating, and Air Conditioning;
- Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*;
- MOP—Meeting of the Parties;
- MT—Metric Ton;
- ODP—Ozone Depletion Potential;
- ODS—Ozone-Depleting Substances;
- Party—States and regional economic integration organizations that have

consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

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 - C. Regulatory Flexibility Act (RFA)
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Regulated Entities

This rule will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial Gas Manufacturing	325120	2869	Fluorinated hydrocarbon gases manufacturers and re-claimers.
Other Chemical and Allied Products Merchant Wholesalers.	422690	5169	Chemical gases and compressed gases merchant wholesalers.
Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	333415	3585	Air-conditioning equipment and commercial and industrial refrigeration equipment manufacturers.
Air-Conditioning Equipment and Supplies Merchant Wholesalers.	423730	5075	Air-conditioning (condensing unit, compressors) merchant wholesalers.
Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	423620	5064	Air-conditioning (room units) merchant wholesalers.
Plumbing, Heating, and Air-Conditioning Contractors	238220	1711, 7623	Central air-conditioning system and commercial refrigeration installation; HVAC contractors.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

EPA is undertaking this rulemaking as a result of the decision issued by the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Arkema v. EPA* (618 F.3d 1, DC Cir. 2010) regarding the December 15, 2009 final rule titled “Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,” published at 74 FR 66413 (2009 Final Rule). Certain allowance holders affected by the 2009 Final Rule filed

petitions for judicial review of the rule under section 307(b) of the Clean Air Act. Among other arguments, the petitioners contended that the rule was impermissibly retroactive because in setting the baselines for the new regulatory period, EPA did not take into account certain inter-pollutant baseline transfers that petitioners had performed during the prior regulatory period.

The Court issued a decision on August 27, 2010, agreeing with petitioners that “the [2009] Final Rule unacceptably alters transactions the EPA approved under the 2003 Rule” (*Arkema v. EPA*, 618 F.3d at 3). The Court vacated the rule in part, “insofar

as it operates retroactively,” and remanded to EPA “for prompt resolution,” (618 F.3d at 10). The Court withheld the mandate for the decision pending the disposition of any petition for rehearing. EPA’s petition for rehearing was denied on January 21, 2011. The mandate issued on February 4, 2011. More detail is provided on the case and EPA’s interpretation of the Court’s decision in Section II.D.

A. How does the Montreal Protocol phase out HCFCs?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances (ODS). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. chapter 85, Subchapter VI, to ensure that the U.S. could satisfy its obligations under the Montreal Protocol. Title VI includes restrictions on production, consumption, and use of ODS that are subject to acceleration if “the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use * * * more rapidly than the applicable schedule” prescribed by the statute (CAA § 606). Both the Montreal Protocol and the Clean Air Act (CAA) define consumption as production plus imports minus exports.

In 1990, as part of the London Amendment to the Montreal Protocol, the Parties identified HCFCs as “transitional substances” to serve as temporary, lower ozone depletion potential (ODP) substitutes for CFCs and other ODS. EPA similarly viewed HCFCs as “important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances”¹ (58 FR 65026). In 1992, through the Copenhagen Amendment to the Montreal Protocol, the Parties created a detailed phaseout schedule for HCFCs beginning with a cap on consumption for industrialized (Article 2) Parties, a schedule to which the U.S. adheres. The consumption cap for each Article 2 Party was set at 3.1 percent (later tightened to 2.8 percent) of a

Party’s CFC consumption in 1989, plus a Party’s consumption of HCFCs in 1989 (weighted on an ODP basis). Based on this formula, the HCFC consumption cap for the U.S. was 15,240 ODP-weighted metric tons (MT), effective January 1, 1996. This became the U.S. consumption baseline for HCFCs.

The 1992 Copenhagen Amendment created a schedule with graduated reductions and the eventual phaseout of HCFC consumption (Copenhagen, 23–25 November, 1992, Decision IV/4). Prior to a later adjustment in 2007, the schedule initially called for a 35 percent reduction of the consumption cap in 2004, followed by a 65 percent reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020 (restricting the remaining 0.5 percent of baseline to the servicing of existing refrigeration and air-conditioning equipment), with a total phaseout in 2030.

The Copenhagen Amendment did not cap HCFC production. In 1999, the Parties created a cap on production for Article 2 Parties through an amendment to the Montreal Protocol agreed by the Eleventh Meeting of the Parties (Beijing, 29 November–3 December 1999, Decision XI/5). The cap on production was set at the average of: (a) 1989 HCFC production plus 2.8 percent of 1989 CFC production, and (b) 1989 HCFC consumption plus 2.8 percent of 1989 CFC consumption. Based on this formula, the HCFC production cap for the U.S. was 15,537 ODP-weighted MT, effective January 1, 2004. This became the U.S. production baseline for HCFCs.

To further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol’s phaseout schedule for HCFCs at the 19th Meeting of the Parties in September 2007. In accordance with Article 2(9)(d) of the Montreal Protocol, the adjustment to the phaseout schedule was effective on May 14, 2008.²

As a result of the 2007 Montreal Adjustment (reflected in Decision XIX/6), the U.S. and other industrialized countries are obligated to reduce HCFC production and consumption 75 percent below the established baseline by 2010, rather than 65 percent as previously required. The other milestones remain

² Under Article 2(9)(d) of the Montreal Protocol, an adjustment enters into force six months from the date the depositary (the Ozone Secretariat) circulates it to the Parties. The depositary accepts all notifications and documents related to the Protocol and examines whether all formal requirements are met. In accordance with the procedure in Article 2(9)(d), the depositary communicated the adjustment to all Parties on November 14, 2007. The adjustment entered into force and become binding for all Parties on May 14, 2008.

the same. The adjustment also resulted in a phaseout schedule for HCFC production that parallels the consumption phaseout schedule. All production and consumption for Article 2 Parties is phased out by 2030.

Decision XIX/6 also adjusted the provisions for Parties operating under paragraph 1 of Article 5 (developing countries): (1) To set HCFC production and consumption baselines based on the average 2009–2010 production and consumption, respectively; (2) to freeze HCFC production and consumption at those baselines in 2013; and (3) to add stepwise reductions of 10 percent below baselines by 2015, 35 percent by 2020, 67.5 percent by 2025, and 97.5 percent by 2030—allowing, between 2030 and 2040, an annual average of no more than 2.5 percent to be produced or imported solely for servicing existing air-conditioning and refrigeration equipment. All production and consumption for Article 5 Parties will be phased out by 2040.

In addition, Decision XIX/6 adjusted Article 2F to allow industrialized countries to produce “up to 10 percent of baseline levels” for export to Article 5 countries “in order to satisfy basic domestic needs” until 2020.³ Paragraph

³ Paragraphs 4–6 of adjusted Article 2F read as follows:

“4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five percent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five percent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2015, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten percent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, ten percent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

6. Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its

¹ Class I refers to the controlled substances listed in appendix A to 40 CFR part 82 subpart A. Class II refers to the controlled substances listed in appendix B to 40 CFR part 82 subpart A.

14 of Decision XIX/6 notes that no later than 2015, the Parties would consider “further reduction of production for basic domestic needs” in 2020 and beyond. Under paragraph 13 of Decision XIX/6, the Parties will review in 2015 and 2025, respectively, the need for the “servicing tails” for industrialized and developing countries. The term “servicing tail” refers to an amount of HCFCs used to service existing equipment, such as certain types of air-conditioning and refrigeration appliances.

B. How does the Clean Air Act phase out HCFCs?

The U.S. has chosen to implement the Montreal Protocol phaseout schedule on a chemical-by-chemical basis. In 1992, environmental and industry groups petitioned EPA to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at that time, EPA believed the U.S. could meet, and possibly exceed, the required Montreal Protocol reductions through a chemical-by-chemical phaseout that employed a “worst-first” approach focusing on certain chemicals earlier than others. In 1993, as authorized by section 606 of the CAA, the U.S. established a phaseout schedule that eliminated HCFC-141b first and would greatly restrict HCFC-142b and HCFC-22 next, followed by restrictions on all other HCFCs and ultimately a complete phaseout (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993).

On January 21, 2003 (68 FR 2820), EPA promulgated regulations (2003 Final Rule) to ensure compliance with the first reduction milestone in the HCFC phaseout: the requirement that by January 1, 2004, the U.S. reduce HCFC consumption by 35 percent and freeze HCFC production. In the 2003 Final Rule, EPA established chemical-specific consumption and production baselines

calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed zero. However:

i. Each Party may exceed that limit on consumption by up to zero point five percent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1 January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020;

ii. Each Party may exceed that limit on production by up to zero point five percent of the average referred to in paragraph 2 of this Article in any such twelve-month period ending before 1 January 2030, provided that such production shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.”

for HCFC-141b, HCFC-22, and HCFC-142b for the initial regulatory period ending December 31, 2009. Section 601(2) states that EPA may select “a representative calendar year” to serve as the company baseline for HCFCs. In the 2003 Final Rule, EPA concluded that because the entities eligible for allowances had differing production and import histories, no single year was representative for all companies. Therefore, EPA assigned an individual consumption baseline year to each company by selecting its highest ODP-weighted consumption year from among the years 1994 through 1997. EPA assigned individual production baseline years in the same manner. EPA also provided an exception allowing new entrants provided that they began importing after the end of 1997 but before April 5, 1999, the date the advanced notice of proposed rulemaking was published. EPA believed that such small businesses might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

The 2003 Final Rule apportioned production and consumption baselines to each company in amounts equal to the amounts in the company’s highest “production year” or “consumption year,” as described above. It completely phased out the production and import of HCFC-141b by granting 0 percent of that substance’s baseline for production and consumption in the table at 40 CFR 82.16. EPA did, however, create a petition process to allow applicants to request very small amounts of HCFC-141b beyond the phaseout. The 2003 Final Rule also granted 100 percent of the baselines for production and consumption of HCFC-22 and HCFC-142b for each of the years 2003 through 2009. EPA was able to allocate allowances for HCFC-22 and HCFC-142b at 100 percent of baseline because, in light of the concurrent complete phaseout of HCFC-141b, the allocations for HCFC-22 and HCFC-142b, combined with projections for consumption of all other HCFCs, remained below the 2004 cap of 65 percent of the U.S. baseline.

EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (*i.e.*, calendar year). Prior to December 15, 2009, EPA had not allocated any HCFC allowances for year 2010 or beyond. The regulations at section 82.15(a) and (b) only addressed the production and import of HCFC-22 and HCFC-142b for the years 2003–2009. Through the 2009 Final Rule (74 FR 66412), EPA addressed the

production and import of HCFC-22 and HCFC-142b for the 2010–2014 control periods. Absent the granting of calendar-year allowances, section 82.15 would have prohibited the production and import of HCFC-22 and HCFC-142b after December 31, 2009. The 2009 Final Rule allowed for continued production and consumption, at specified amounts, of HCFC-142b, HCFC-22, and other HCFCs not previously included in the allowance system, for the 2010–2014 control periods.

In the U.S., an allowance is the unit of measure that controls production and consumption of ODS. EPA establishes company-by-company baselines (also known as “baseline allowances”) and allocates calendar-year allowances equal to a percentage of the baseline for specified control periods. A calendar-year allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. EPA allocates two types of calendar-year allowances—production allowances and consumption allowances. “Production allowance” and “consumption allowance” are defined at section 82.3. To produce an HCFC for which allowances have been allocated, an allowance holder must expend both production and consumption allowances. To import an HCFC for which allowances have been allocated, an allowance holder must expend consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to EPA.

Since EPA is implementing the phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. Upon EPA approval, an allowance holder may transfer calendar-year allowances of one type of HCFC for calendar-year allowances of another type of HCFC, with transactions weighted according to the ODP of the chemicals involved. Pursuant to section 607 of the CAA, EPA applies an offset to each HCFC transfer by deducting 0.1 percent from the transferor’s allowance balance. The offset benefits the ozone layer since it “results in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions” (42 U.S.C. 7671f).

The U.S. remained comfortably below the aggregate HCFC cap through 2009. The 2003 Final Rule announced that EPA would allocate allowances for

2010–2014 in a subsequent action and that those allowances would be lower in aggregate than for 2003–2009, consistent with the next stepwise reduction for HCFCs under the Montreal Protocol. EPA stated its intention to determine the number of allowances that would be needed for HCFC–22 and HCFC–142b, bearing in mind that other HCFCs would also contribute to total HCFC consumption. EPA noted that it would likely achieve the 2010 reduction step by applying a percentage reduction to the HCFC–22 and HCFC–142b baselines. EPA subsequently monitored the market to estimate servicing needs and market adjustments in the use of HCFCs, including HCFCs for which EPA did not establish baselines in the 2003 Final Rule.

In the 2009 Final Rule, EPA determined both the estimated demand for HCFC–22 during the 2010–2014 regulatory period and the percentage of that estimated demand for which it was appropriate to allocate allowances. As described in Section V.B. of this action, EPA determined that the percentage of the estimated demand allocated in the form of allowances should not remain constant from year to year but rather should decline on an annual basis. For 2010, EPA allocated allowances equal to 80 percent of the estimated demand for HCFC–22, concluding that reused, recycled, and reclaimed material could meet the remaining 20 percent. Under the 2009 Final Rule, the percentage of estimated demand for which there was no allocation, and therefore would need to be met through recycling and reclamation, rose from 20 percent in 2010 to 29 percent in 2014 to ensure the U.S. market would have a viable reclamation industry and could meet the 2015 stepwise reduction under the Montreal Protocol. The determinations EPA made in the 2009 Final Rule regarding (1) The total estimated demand for HCFC–22 in 2010–2014 and (2) the percentage of that estimated demand that EPA would address through an allowance allocation were not at issue in the litigation and are unaffected by the Court's decision. EPA is not revisiting either determination with respect to 2011 in this interim final action, but rather is relying on the existing record for the 2009 Final Rule. However, EPA welcomes comment on whether it should revisit these determinations in the future. EPA is also interested in comments on whether it could and should allocate a different percentage of baseline for calendar-year production than for calendar-year consumption, while still meeting U.S.

obligations under the Montreal Protocol and complying with the CAA.

C. What sections of the Clean Air Act apply to this rulemaking?

Several sections of the CAA apply to this rulemaking. Section 605 of the CAA phases out production and consumption and restricts the use of HCFCs in accordance with the schedule set forth in that section. As discussed in the 2009 Final Rule (74 FR 66416), section 606 provides EPA authority to set a more stringent phaseout schedule than the schedule in section 605 based on an EPA determination regarding current scientific information or the availability of substitutes, or to conform to any acceleration under the Montreal Protocol. EPA previously set a more stringent schedule than the section 605 schedule through a rule published December 10, 1993 (58 FR 65018). Through the 2009 Final Rule, EPA made a further adjustment to the section 605 schedule based on the acceleration under the Montreal Protocol as agreed to at the Meeting of the Parties in September 2007. The more stringent schedule established in that rule is unaffected by the recent Court decision and is therefore still in effect.

Section 606 provides authority for EPA to promulgate regulations that establish a schedule for production and consumption that is more stringent than what is set forth in section 605 if: “(1) Based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.” It is only necessary to meet one of the three criteria. In the 2009 Final Rule, EPA determined that all three criteria had been met with respect to the schedule for phasing out production and consumption of HCFC–22 and HCFC–142b.

As noted in the 2009 Final Rule, while section 606 is sufficient authority for establishing a more stringent schedule than the section 605 phaseout

schedule, section 614(b) of the CAA provides that in the case of a conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, section 614(b) requires the Agency to establish phaseout schedules at least as stringent as the schedules contained in the Montreal Protocol. To meet the 2010 stepdown requirement, EPA is continuing to allocate HCFC allowances at a level that will ensure the aggregate HCFC production and consumption will not exceed 25 percent of the U.S. baselines. For more discussion of this point, see 74 FR 66416.

Finally, section 607 addresses transfers of allowances both between companies and chemicals. EPA is further clarifying its policy on inter-pollutant transfers in this action.

D. How does this action relate to the recent court decision?

Certain allowance holders affected by the 2009 Final Rule filed petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit. Among other arguments, the petitioners, Arkema Inc., Solvay Fluorides, LLC, and Solvay Solexis, Inc., contended that the rule was impermissibly retroactive because in setting the baselines for the new regulatory period, EPA did not take into account certain inter-pollutant baseline transfers that petitioners had performed during the prior regulatory period. The transfers at issue occurred in 2008. Solvay Solexis, Inc. submitted two Class II Controlled Substance Transfer Forms for consumption allowance transfers to Solvay Fluorides, LLC on February 15, 2008, and March 4, 2008. Arkema, Inc. submitted two Class II Controlled Substance Transfer Forms for consumption and production allowance transfers on April 18, 2008. Each company requested EPA's approval to convert HCFC–142b allowances to HCFC–22 allowances, and checked a box on the EPA transfer form indicating that “baseline” allowances would be transferred. EPA sent non-objection notices to both Solvay Solexis and Solvay Fluorides on February 21, 2008 and March 20, 2008 and to Arkema, Inc. in April 2008. The transfer requests and EPA's approvals were attached to petitioners' court filings and are available in the docket for this action.

In the Notice of Proposed Rulemaking titled “Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,” published in the **Federal Register** at 73 FR 78680 on December 23, 2008 (2008 Proposed Rule), EPA requested

comments on establishing baselines for the 2010–2014 regulatory period “with or without” taking into account baseline inter-pollutant transfers made during the 2003–2009 regulatory period (73 FR 78687). The proposed regulatory text accounted for the inter-pollutant transfers discussed above. The increase in HCFC–22 baseline allowances for Arkema, Inc. and Solvay Fluorides, LLC presented in the 2008 Proposed Rule resulted in a larger amount of HCFC–22 baseline allowances overall and therefore a lower percentage of HCFC–22 baselines allocated across the board in each control period. Specifically, the proposed shift resulted in a 16 percent decrease in market share for all other allowance holders, and increases for the petitioners: Arkema and Solvay. For more detail on the impact of these transfers, see Section V.C. of this preamble.

In the 2009 Final Rule, after considering comments, EPA determined that allowing inter-pollutant transfers to carry forward from one regulatory period to the next could undermine the Agency’s chemical-by-chemical phaseout approach and could encourage market manipulation. For a more detailed discussion, see Section V.A.1. EPA also concluded that section 607 of the CAA was best read as limiting inter-pollutant transfers to those conducted on an annual basis. For these reasons, EPA did not take the 2008 inter-pollutant transfers into account in establishing the baselines for the 2009 Final Rule covering 2010–2014.

The Court issued a decision on August 27, 2010, agreeing with petitioners that “the [2009] Final Rule unacceptably alters transactions the EPA approved under the 2003 Rule” (*Arkema v. EPA*, 618 F.3d at 3). The Court vacated the rule in part, “insofar as it operates retroactively,” and remanded to EPA “for prompt resolution,” (618 F.3d at 10). The Court withheld the mandate for the decision pending the disposition of any petition for rehearing. On November 12, 2010, EPA filed a petition for rehearing, which was denied on January 21, 2011. The mandate issued on February 4, 2011.

Because the Court vacated the rule only in part, without specifying which part or parts were vacated, EPA may adopt a reasonable interpretation of the vacatur’s extent. In doing so, EPA is relying on its expertise in administering the HCFC phaseout regulations under Title VI of the CAA. First, EPA notes that the rule contains elements that were not at issue in the litigation. EPA concludes that the vacatur has no effect on allowances for any substances other than HCFC–142b and HCFC–22, since

the petitioners’ claims and the opinion itself discuss only those two substances. Similarly, EPA concludes that other discrete portions of the rule, such as the provisions on use and introduction into interstate commerce, are unaffected by the vacatur.

The baselines for HCFC–142b and HCFC–22 were clearly at issue in the litigation and indeed are the focus of the Court’s opinion. The Court found that “the Agency’s refusal to account for the Petitioners’ baseline transfers of inter-pollutant allowances in the Final Rule is impermissibly retroactive,” (618 F.3d at 9). Because baseline and calendar year allowances are inextricably linked,⁴ EPA has determined that the Court’s vacatur voids the HCFC–22 and HCFC–142b baselines in 40 CFR 82.17 and 82.19 as well as the percentage of baseline allocated for those specific substances in 40 CFR 82.16 for all companies listed in those sections.⁵ This means that until EPA establishes new baselines and allocates new calendar-year allowances, production and import of these two substances is prohibited under 40 CFR 82.15. Recognizing this scenario, on January 28, 2011, EPA sent letters to affected stakeholders informing them that the Agency would exercise enforcement discretion for a limited period provided their production and import did not exceed specified levels and provided that they adhered to additional conditions.

In determining the meaning of the Court’s vacatur, EPA considered whether this interpretation was consistent with what the Court intended and a good fit for the specific

⁴ The reason baseline and calendar-year allocations are inextricable is because calendar-year allocations are expressed as a percentage of baseline, and the percentage of baseline allocated for a specific substance varies depending on the sum of all company baselines for that substance. The process works as follows for each specific HCFC: First, all the company-specific baselines listed in the tables at 40 CFR 82.17 and 82.19 are added to determine the aggregate amount of baseline production and consumption, respectively. Second, EPA determines how many consumption allowances the market needs for a given year, taking into account recycled, reused, and reclaimed material, and divides that amount by the aggregate amount of baseline allowances. The resulting percentage listed in the table at section 82.16 becomes what each company is allowed to consume in a given control period. For example, a company with 100,000 kg of HCFC–22 baseline allowances would multiply that number by the percentage allowed for 2011 (for example, 32 percent) to determine its calendar-year allowance is 32,000 kg. Historically and in this interim final rule, EPA has allocated the same percentage of baseline allowances for production as it does for consumption.

⁵ The companies’ allocations are inter-related because, as noted in footnote 4, the percentage of baseline allocated varies according to the sum of the company-specific baselines.

circumstances, which include the goals and design of the HCFC allowance program and the basic structure of the 2009 Final Rule. While this interpretation is appropriate in this instance, it is possible that another interpretation would be more appropriate in a case involving a program with different goals, design, or structure.

In the 2009 Final Rule, EPA relied on its assessment of the amount of virgin and recovered HCFC–22 and HCFC–142b needed to service existing equipment and transition to the 2015 stepdown under the Montreal Protocol. The Court did not take issue with this assessment. At this time, EPA has not received information indicating that demand will be higher than the Agency’s assessment predicted. On the contrary, EPA has heard from several anecdotal sources that the amount of actual market demand for HCFC–22 may in fact be lower than the amount identified in the *Servicing Tail Report*. However, since EPA does not have sufficient data to support this conclusion at this time, and recognizes the urgent need to act quickly to establish allowances for the 2011 control period, the Agency is relying on the record for the 2009 Final Rule, which includes the Agency’s prior assessment of demand for HCFC–22 and HCFC–142b in 2011. Therefore, through this action, EPA is establishing new baselines for 2011 reflecting the court’s decision and allocating the percentage of baseline needed to ensure that the total allocation for 2011 remains the same as in the 2009 Final Rule. If sufficient information becomes available in future, EPA may adjust the aggregate allocation level for future control periods.

1. Addressing 2010 Allowances

EPA interprets the Court’s decision as applying, at a minimum, to the HCFC–22 and HCFC–142b baseline and calendar-year allowances for 2011–2014. EPA is not addressing 2010 allowances in this action. The Agency plans to take comment in a future notice-and-comment rulemaking on whether the vacatur and remand should be interpreted as applying to the 2010 allocations, and if so, how allowances in future control periods might be adjusted to reflect this. The 2011 control period is already well underway, and as discussed in the good cause finding in Section III, it is important that EPA establish a definitive 2011 allocation now to dispel confusion and allow normal business activities to proceed. In particular, EPA believes the urgent need for certainty regarding the consumption

allowance allocations in the 2011 control period precludes the Agency from considering any adjustments during 2011. However, EPA intends to address this issue in detail in a separate notice-and-comment rulemaking with respect to future control periods.

III. Justification for This Interim Final Rule

EPA is taking this action as an interim final rule without prior proposal and public comment because EPA finds that the good cause exemption from the notice-and-comment rulemaking requirement of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, applies here. Section 307(d) of the CAA states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register** (CAA § 307(d)(3)). The promulgation or revision of regulations under Title VI of the CAA is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the APA. Section 553(b)(B) of the APA, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice-and-comment public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary, impracticable, and contrary to the public interest. In reaching this determination, EPA considered several factors: (1) Taking interim final action for 2011 avoids regulatory confusion, disruption of normal business activities, and effects on consumers pending development of a notice-and-comment rulemaking (see, *e.g.*, *Brae Corp. v. United States*, 740 F.2d 1023 (DC Cir. 1984)); (2) the Agency is relying on the existing record from the 2009 Final Rule for this action (see, *e.g.*, *Chamber of Commerce v. SEC*, 443 F.3d 890 (DC Cir. 2006)); and (3) the rule's duration is limited (see, *e.g.*, *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506 (DC Cir. 1983)).

First, it is in the public interest to dispel confusion, allow normal business activities to proceed, and avoid adverse effects on consumers. EPA has received numerous questions from industry about what, if any, allowances companies currently hold in light of the Court's decision. The primary purpose

of this interim final rule is to dispel confusion and provide regulatory certainty for the near term. EPA interprets the vacatur as voiding company baselines and calendar-year allowances for HCFC-22 and HCFC-142b, and because entities are prohibited from producing or importing HCFCs without allowances, quick action is necessary to ensure the continued production and import of those two HCFCs. This interim final action will provide industry with certainty for 2011, and allow normal business operations to continue. It also gives EPA time to develop notice-and-comment rules that will cover subsequent control periods.

This action will also avoid unintended consequences for consumers and businesses who own appliances containing HCFC-22 and/or HCFC-142b (*e.g.*, refrigerators and air conditioners), as well as the businesses that service these appliances. Absent this rulemaking, there could be a shortage of these HCFCs. Consumers and businesses unable to service their existing HCFC-22 equipment with HCFCs would instead have to retrofit their existing appliances before the end of their useful life to use a refrigerant other than that which was intended for the appliance, or purchase new equipment to replace existing appliances. Not only would this be expensive and unexpected, especially for those who bought a new unit shortly before January 1, 2010, but the shortage could lead to improper retrofits that decrease a unit's effectiveness and energy efficiency, cost the consumer more to operate, and result in further refrigerant emissions to the atmosphere. Considering the current state of the economy, shortages of HCFC-22 could lead appliance owners, who likely do not have the same level of experience as a licensed professional, to recharge their units on their own. Improper retrofits and recharging could raise the potential for mixing refrigerants, which could damage systems and increase the likelihood of mixed refrigerants being vented into the atmosphere, since mixtures may not work properly and likely could not be reclaimed.

At worst, these scenarios could lead to an unanticipated changeover of significant quantities of equipment, which would be at odds with EPA's goal of minimizing impacts to business and consumers by supporting a gradual turnover of the installed base of equipment as individual equipment reaches the end of its useful life, allowing existing equipment to continue to operate properly. In the preamble to the 2009 Final Rule, EPA stated:

"Congress intended to permit the continued use of previously-manufactured appliances" (74 FR 66438). EPA discussed this issue in detail at that time, in the context of the section 605(a) ban on the "use" of HCFCs (74 FR 66437-66438). In this action, the Agency is not revisiting its analysis or conclusions with respect to this issue. Accordingly, EPA is allocating production and consumption allowances for HCFC-22 and HCFC-142b in a way that avoids shortening the useful lifetime of appliances that were manufactured prior to the effective date of the use ban (January 1, 2010).

Furthermore, a supply shortage could raise the price of affected gases, thereby increasing incentives for entities to illegally smuggle HCFC-22 into the country to meet the demand of consumers and businesses. There are numerous cases cited on the EPA Web site (<http://www.epa.gov/ozone/enforce/index.html>) documenting the smuggling of CFCs and HCFCs. Not only would this hurt entities that are abiding by the law, it could even hurt consumers and businesses that unknowingly receive inferior material. For all these reasons, it is important that EPA take action quickly. Since it is impracticable to complete a notice-and-comment rulemaking prior to the 2011 summer season, when working air conditioners are most important, and delay would be contrary to the public interest, interim final action is necessary.

The second reason for invoking the good cause exemption is that EPA is relying on the existing record for the 2009 Final Rule, which is still applicable and sufficiently current for the purposes of this action. In this interim final rule, EPA is not revisiting the determination made in the 2009 Final Rule regarding the total amount of HCFC production and import that the Agency will allow for 2011. EPA is simply addressing what share of that total amount should be allocated to particular companies. The 2008 Proposed Rule (73 FR 78680) provided all interested parties an opportunity to comment on the total HCFC production and import amount for 2011. Thus, it is unnecessary to provide a second opportunity to comment on that amount prior to issuing this interim final rule.

Third, this interim final rule only addresses 2011—the current control period—and is thus limited in duration. The specific duration is defined by the structure of the stratospheric ozone protection program, which operates in control periods that correspond to calendar years. Allowances are allocated for a specific control period. EPA intends to initiate a notice-and-

comment rulemaking or rulemakings as soon as possible to address subsequent control periods.

For the reasons explained above, and given the Court's statement that it was remanding to EPA "for prompt resolution," notice and public procedure are impracticable, unnecessary, and contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Nonetheless, EPA is providing 30 days for submission of public comments following this action. EPA will consider all written comments submitted in the allotted time period to determine whether to issue additional production allowances for 2011.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action relieves a restriction from the regulatory ban on the production and consumption of HCFC-22 and HCFC-142b in the U.S., EPA is making this action effective immediately upon publication to ensure the availability of these HCFCs for servicing air conditioning and refrigeration equipment in 2011.

IV. Summary of This Final Action

In response to the Court's decision, EPA is (1) Establishing 2011 company-by-company consumption and production baselines for HCFC-22 and HCFC-142b in the tables at 40 CFR 82.17 and 82.19 in a manner that reflects the 2008 inter-pollutant baseline transfers and (2) allocating company-by-company production and consumption allowances for these substances for 2011 by establishing percentages of baseline in the table at section 82.16. EPA is also updating the tables at sections 82.17 and 82.19 to reflect 2010 inter-company, single-pollutant baseline transfers and revising the list of allowance holders to update company names. These actions are consistent with actions taken in the 2009 Final Rule. To reflect the court's vacatur, EPA is removing the allocation percentages from the table at section 82.16 for the years 2011–2014. In this rulemaking, EPA is adding an allocation percentage for 2011. In a separate notice-and-comment rulemaking or rulemakings, EPA will address the allocations for the control periods 2012–2014. All aspects of the 2009 Final Rule promulgated on December 15, 2009 (74 FR 66412) that are not addressed in this interim final rule are unchanged.

As a Party to the Montreal Protocol, and having ratified the Montreal Protocol and all of its amendments, the U.S. was required to decrease its amount of HCFC consumption and production to 25 percent of the U.S. baseline in 2010. The cap is the same for the years 2010–2014 before it drops down to 10 percent of baseline in 2015. Under the cap, the aggregate allowances for all U.S. HCFC consumption in 2011 cannot exceed 3,810 ODP-weighted MT (25 percent of the aggregate U.S. consumption baseline) annually, and the aggregate allowances for all U.S. HCFC production in 2011 cannot exceed 3,884.25 ODP-weighted MT (25 percent of the aggregate U.S. production baseline) annually.

To stay below the cap set by the Montreal Protocol for the 2011 control period addressed in this rulemaking, EPA is using the historical production and consumption baselines as adjusted in the 2009 Final Rule, with further adjustments to reflect the 2008 inter-pollutant baseline transfers and inter-company, single-pollutant baseline transfers that occurred after issuance of the 2009 Final Rule.

EPA determined in the 2009 Final Rule that for HCFC-22, it was necessary to allocate a percentage of baseline that would decrease on an annual basis to reflect a projected decrease in demand as well as to promote recycling and reclamation. EPA is not revisiting that determination in this rulemaking. EPA concluded in the 2009 Final Rule that this approach would help prevent shortages that might otherwise occur upon the stepdown in 2015. In this action, EPA is allocating 32.0 percent of baseline for HCFC-22 in 2011, which reflects an annual decline from the 2010 amount. EPA is allocating 4.9 percent of baseline for HCFC-142b in 2011. The HCFC-142b number relates solely to the aggregate baselines for this substance and does not reflect an annual decline. The reasons for establishing these allocation percentages for 2011 are discussed in Section V.

EPA's allocations for both HCFC-22 and HCFC-142b meet U.S. obligations under the Montreal Protocol and reflect the use restrictions under section 605(a) of the CAA while providing for servicing needs consistent with those restrictions. The allocations for HCFC-22 and HCFC-142b reflect EPA's analysis of market data for these chemicals, as prepared in advance of the 2009 Final Rule. The allocation levels for these HCFCs meet the demand for virgin material and avoid shortages during 2011.

In this action, EPA is not changing the methodology used in the 2009 Final

Rule to calculate the total number of calendar-year consumption and production allowances. While the number of total calendar-year consumption allowances is unchanged, the number of production allowances is slightly lower (less than two percent lower) than in the 2009 Final Rule due to the changes in aggregate baseline allowances. This is explained in more detail in Section V.C. The only other difference is in the distribution of those allowances.

At this time, EPA is allocating a total of 2,504 ODP-weighted MT of HCFC-22 and HCFC-142b calendar-year consumption allowances and 2,302 ODP-weighted MT of HCFC-22 and HCFC-142b calendar-year production allowances for 2011. Both allocations remain below the limit established by the Montreal Protocol for the 2010–2014 phasedown step of 75 percent below baseline. The difference between the cap and the total allocation reflects EPA's estimate (developed for the 2009 Final Rule) of the demand for HCFCs during these control periods. It also will accommodate minor adjustments in the market, particularly to allow potential market growth for other allowed HCFCs. As discussed in more detail in Section V.B.3. and in the preamble to the 2009 Final Rule, it will also encourage greater reclamation of recovered refrigerant and thus facilitate preparation for the 2015 step down in the consumption cap to 10 percent of baseline.

This action also clarifies EPA's policy on inter-pollutant transfers for 2011 and all future control periods in Section V.A.1.

V. Allocation of Allowances for the 2011 Control Period

A. Baselines for HCFC-22 and HCFC-142b Allowances

In the 2009 Final Rule, EPA presented the allocation structure for HCFC-22 and HCFC-142b for the control periods 2010–2014: allocating a percentage of the baseline production and consumption allowances. The rationale for this system is discussed further at 74 FR 66412. The Court found no fault with EPA's framework for allocating HCFCs in the 2009 Final Rule, except the aspects of the rule they deemed to be retroactive, *i.e.*, not taking into account inter-pollutant baseline transfers that occurred in the prior regulatory period in establishing company-specific baseline allowances. To address this, EPA is establishing HCFC-22 and HCFC-142b baseline allowances for 2011 that reflect past inter-pollutant baseline transfers deemed permanent by the Court.

1. Adjusting the Baseline for Inter-Company and Inter-Pollutant Transfers

Sections 607(b) and (c) of the CAA address inter-pollutant and inter-company transfers of allowances, respectively. Inter-pollutant transfers are the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. Inter-company transfers are transfers of allowances for the same ODS from one company to another company. Section 607(c) also authorizes inter-company transfers combined with inter-pollutant transfers, so long as the requirements of both are met. The corresponding regulatory provisions for HCFCs appear at 40 CFR 82.23.

The 2009 Final Rule updated the baselines for HCFC-22 and HCFC-142b to reflect name changes and inter-company baseline transfers, *i.e.*, transfers of baseline for a specific type of HCFC from one company to another. Doing so reflected the changes in the marketplace that had occurred since EPA promulgated the 2003 Final Rule. Inter-company baseline transfers provide a mechanism for new entrants to join the HCFC market and for other companies to expand their business. EPA recognizes that in some cases, entities are no longer actively involved in HCFC production, import, and/or export activities. EPA retained the baseline for such entities, noting that this had been a mechanism by which new entrants had entered the HCFC allowance system in the past.

The 2009 Final Rule also addressed four inter-pollutant baseline transfers made during the prior regulatory period (see Section II.D. of this action for more detail). EPA had proposed to adjust the company baselines to reflect these four inter-pollutant baseline transfers in the 2008 Proposed Rule. Eight commenters opposed, and two commenters supported, these proposed adjustments. At issue was whether the inter-pollutant baseline transfers should carry forward as part of the companies' baseline allowances in the next regulatory period.

After reviewing the comments, EPA concluded that adjusting the baselines to reflect inter-pollutant baseline transfers could create incentives for future manipulation of the allocation system in anticipation of future control periods. EPA remains concerned about the potential for such future manipulation if inter-pollutant baseline transfers during the current regulatory period are carried forward as a change in a company's baseline for future regulatory periods. For example, in 2020 EPA will no longer be issuing HCFC-22

production or consumption allowances (see section 82.16(e)). EPA expects that companies with HCFC-22 allowances would no longer be in the HCFC market at that date if they did not hold allowances for other HCFCs that may still be produced after 2020. If EPA were to allow inter-pollutant baseline transfers that carried forward into the new regulatory period, companies with HCFC-22 baselines in 2019 could convert them all to baselines for HCFC-123. Perpetuating the HCFC-22 baselines in a new form would be counter to the design of the chemical-by-chemical phaseout, under which the baseline allowances for a particular chemical are intended to drop out of the system upon the phase-out of that chemical. As another example, in 2015, a producer or importer that previously had not participated in the HCFC-123 market could dominate that market by converting its HCFC-22 baseline in 2014 to HCFC-123 baseline. Given the different ODPs of HCFC-22 and HCFC-123 (0.055 and 0.02, respectively), converting one baseline allowance of HCFC-22 would result in 2.75 baseline allowances of HCFC-123. Also, since companies hold many more HCFC-22 baseline allowances than HCFC-123 baseline allowances, converting those HCFC-22 baseline allowances would have an overwhelming effect on the current HCFC-123 baseline allowance holders and the overall market. EPA agrees with commenters on the 2008 Proposed Rule that taking inter-pollutant baseline transfers into account in setting baselines could have the effect of moving the U.S. HCFC phasedown from a chemical-by-chemical phaseout, as established under the "worst-first" approach in the 1993 Final Rule, towards an ODP-weighted phasedown. Thus, there are important policy reasons going forward for not taking inter-pollutant transfers into account in establishing baselines for new regulatory periods.

Some commenters on the 2008 Proposed Rule stated that modifying the baselines by taking into account inter-pollutant transfers would be contrary to the CAA. One commenter argued that section 607 of the CAA allows EPA to approve inter-pollutant transfers of allowances only on a year-to-year basis. That commenter pointed to language in section 607(b) stating that EPA regulations are to permit "a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis." The commenter also

discussed the legislative history of the 1990 CAA Amendments.

EPA does not agree with the commenter that the language of section 607(b) is clear on its face. However, where the statutory language is ambiguous, EPA has discretion to choose a reasonable interpretation of that language. EPA determined in the 2009 Final Rule that section 607(b) is best read as permitting only year-by-year inter-pollutant transfers. EPA continues to believe that this is the best interpretation of the statutory language. Section 607(b) states that EPA's rules are to permit "a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year." This language emphasizes the year-by-year nature of such transactions. No parallel language appears in section 607(c). That section does, however, provide that any inter-pollutant transfers between two or more persons must meet the requirements of section 607(b).

As the Court noted, "the Agency is certainly entitled to * * * institute a program that forbids baseline inter-pollutant transfers in the future," (*Arkema v. EPA*, 618 F.3d at 9). Hence, EPA concludes that requiring all inter-pollutant transfers to be conducted on a yearly—and thus temporary—basis going forward is the approach most consistent with the wording of section 607(b). Further discussion of the reasons for limiting inter-pollutant transfers to those conducted on a calendar-year basis is available in the Response to Comments on the 2008 Proposed Rule (included in the docket for this rulemaking).

Consistent with the Court's decision regarding *past* inter-pollutant transfers (those conducted during the prior regulatory period), the baselines established in this action for 2011 take into account the 2008 inter-pollutant baseline transfers discussed earlier in this notice. EPA is clarifying, however, that it has not approved any inter-pollutant transfers of baseline allowances in the current regulatory period, and for the reasons given in the 2009 Final Rule and in this action, in future EPA intends to approve inter-pollutant transfers only on a year-by-year basis. Thus, in the context of the protection of stratospheric ozone allowance system, companies should not expect that any inter-pollutant transfers they conduct will affect their baselines either in the current regulatory period or any future regulatory period.

As it did in the 2009 Final Rule, EPA is adjusting baseline allowances to reflect inter-company, single-pollutant

baseline transfers that occurred since the last final rule was signed.

In summary, this interim final rule reflects the changes in consumption and production baseline allowances from (1) The 2008 inter-pollutant transfers deemed permanent by the Court and (2) inter-company, single-pollutant baseline transfers that have occurred since the 2009 Final Rule was signed, and (3) clarifies the types of inter-pollutant transfers that will be permitted in the future. The consumption and production baseline amounts for HCFC-22 and HCFC-142b for 2011 are shown below in Table 3.

B. Factors for Considering Allocation Amounts for HCFC-22 and HCFC-142b

In the 2009 Final Rule, EPA decided to allocate HCFC-22 and HCFC-142b allowances based on the projected servicing needs for those compounds, taking into account the amount of those needs that can be met through recycling and reclamation. EPA is not changing that approach in this interim final rule. However, the specific amounts allocated per company are different due to the changed baselines and the need to apply a different allocation percentage to company baselines in order to keep the aggregate amount allocated the same. Because it is necessary to promote use of reused, recycled, and reclaimed material in anticipation of the 2015 phasedown step, EPA does not intend to allocate the difference between the consumption allocation authorized by the Parties to the Montreal Protocol and the consumption allocation authorized by this rule except under unforeseen extenuating circumstances.

1. The Importance of HCFC-22 Relative to HCFC-142b Servicing Needs for Existing Equipment

HCFC-22 is the most widely-used HCFC. The demand for its use in servicing existing equipment was the primary factor affecting EPA's allocation of production and consumption allowances of HCFCs for the current regulatory period. Prior to issuing the 2009 Final Rule, EPA issued and sought comment on three versions of a draft report analyzing servicing demand for the HCFC appliances in the U.S. refrigeration and air-conditioning sector projected to be in service from 2010-2019 (all versions available at Docket EPA-HQ-OAR-2008-0496: Published November 4, 2005 at 70 FR 67172; released at a stakeholder meeting on September 29, 2006; published December 23, 2008, with 2008 Proposed Rule). The *Servicing Tail Report* focuses on air-conditioning and refrigeration appliances because such equipment

represents the bulk of the servicing need. In addition, the servicing exception to the use ban for HCFC-22 and HCFC-142b pertains only to use as a refrigerant in such equipment. Under section 605(a) of the CAA and EPA's implementing regulations, nearly all other uses of these two HCFCs were banned effective January 1, 2010. The projected servicing need for HCFC-22 in 2011 is approximately 57,900 MT (3,185 ODP-weighted MT), or approximately 84 percent of the consumption cap for all HCFCs in 2011 under the Montreal Protocol, which is 3,810 ODP-weighted MT. HCFC-142b has primarily been used as a foam blowing agent, a use that was phased out in 2010. The projected servicing demand for existing refrigeration equipment containing HCFC-142b is extremely low: Approximately 100 MT (7 ODP-weighted MT). EPA therefore focused the analysis on HCFC-22 because that compound is the predominant HCFC in the installed base of air-conditioning and refrigeration equipment for which servicing in the U.S. will likely continue.

As discussed in the 2009 Final Rule, the majority of HCFC-22 equipment that is projected to be in use from this point onward will be air-conditioning applications, including window units, packaged terminal units, unitary air-conditioning, chillers, dehumidifiers, water and ground source heat pumps, and motor vehicle air-conditioning in buses and trains. The report projected that approximately 145.6 million units of all such types of HCFC-22 air-conditioning equipment were in use in 2010, decreasing by about 41 percent in 2015 and 86 percent in 2020. In addition, approximately 3.8 million units of HCFC-22 refrigeration equipment were in use in 2010. The installed base of HCFC-22 refrigeration equipment is projected to decrease from 2010 levels by about 44 percent in 2015 and 75 percent in 2020. For more on the *Servicing Tail Report* and the Vintaging Model, which was used to develop the report, see 74 FR 66424 and the *Servicing Tail Report* included in the docket.

EPA estimates that the servicing need for HCFC-22 will continue to decrease each year, and consistent with the 2009 Final Rule, this interim final rule accounts for this by allocating a smaller amount for 2011 than was allocated for 2010. This approach is described in Section V.B.3. In this interim final action, EPA is maintaining the overall HCFC-22 allocation levels for 2011 that the Agency determined were appropriate in the 2009 Final Rule. EPA's decision not to allocate above the

need projected in the *Servicing Tail Report* is discussed in the preamble to the 2009 Final Rule.

2. Meeting Servicing Needs With Virgin and Recovered Material

In the 2009 Final Rule, the Agency recognized that servicing demand can be met with a combination of newly-manufactured or imported HCFCs (virgin HCFCs) and HCFCs that have been recovered and either reused, recycled or reclaimed. Therefore, EPA did not anticipate that virgin HCFC-22 would need to be produced or imported to meet the entire HCFC-22 servicing demand (estimated to be 3,185 ODP-weighted MT in 2011). The *Servicing Tail Report* analyzes various scenarios regarding reclamation. EPA continues to believe that reused, recycled, and reclaimed material can help meet HCFC-22 servicing needs and is therefore not changing course at this time. Should new data be presented, EPA reserves the option of increasing the amount of demand for servicing existing equipment that should be met by reused, recycled, and reclaimed material in future control periods.

3. Annual Reduction in Allocated Amounts

As explained in the preamble to the 2009 Final Rule, without year-to-year reductions in the allocations for virgin HCFC-22, the HCFC-22 market could be oversaturated, and the contribution of reused, recycled, and reclaimed refrigerant would decrease, both in the total number of kilograms and as the proportion of overall need.

EPA is particularly concerned with encouraging a smooth transition to the 2015 stepdown. At that date, the U.S. must meet a 90 percent reduction below the baseline for all HCFCs, which is equivalent to 1,524 ODP-weighted MT. EPA's *Servicing Tail Report* shows that even a 20 percent recovery rate would be insufficient to meet the demand for HCFC-22 in 2015. As shown in Table 4-5 in the report, demand for HCFC-22 in 2015 is projected to be 38,800 MT while the cap for all HCFCs equates to 27,709 MT of HCFC-22 (assuming no allocation for any other HCFCs). A 20 percent recovery rate would allow for the additional use of 8,800 MT but would still leave a shortfall of 2,291 MT in 2015. In developing the 2009 Final Rule, EPA calculated that to meet the total demand in 2015, the recovery rate would have to increase to 26 percent (representing 29 percent of total servicing demand).

In the 2009 Final Rule, EPA determined that it was desirable to institute a year-by-year reduction for the

period 2010–2014. The Agency is maintaining that policy in this interim final action for 2011. A smooth transition for stakeholders—including continued availability of needed material for approved uses—has historically been an essential aspect of U.S. success in implementing the Montreal Protocol and CAA requirements. To ease the transition to 2015 and avoid disruptions to the market and shortages in HCFC–22 at that date, it is necessary to take steps now to foster the development of a robust recovery and recycling industry in the U.S.

EPA determined in the 2009 Final Rule the level of allocation that would meet the servicing demand over 2010–2014. In this interim final action, EPA is maintaining the overall HCFC–22 allocation levels for 2011 that the Agency determined were appropriate in the 2009 Final Rule. Since EPA is not banning the use of existing HCFC–22 appliances manufactured prior to January 1, 2010, reused, recycled, and reclaimed HCFC–22 will become more valuable as the phaseout progresses. The demand for HCFC–22 to service existing equipment will provide an economic incentive to increase the quantities of recovered HCFC–22 available for reuse, recycling, and reclamation. The docket for the 2009 Final Rule (EPA–HQ–OAR–2008–0496) provides further information on EPA's assumptions regarding the availability of reused, recycled and reclaimed HCFC–22 to meet servicing demand.

Because the primary benefit of annually reducing the allocation is to ensure demand in 2015 is met through greater recovery and reclamation, EPA continues to believe that it is appropriate to base the allocation on that goal. In developing the 2009 Final Rule, EPA estimated demand in 2015 for HCFC–22 would be 38,800 MT. Were the allocations to consist entirely of HCFC–22, the cap would limit the 2015 HCFC–22 allocation to only 27,709 MT, a difference of 11,091 MT that would have to be made up with recovered material. Furthermore, it is likely that the allocation in 2015 will not consist entirely of HCFC–22, as EPA will need to reserve room under the cap for other HCFCs. In the 2009 Final Rule, EPA determined it was appropriate to establish an annual step-down such that the amount of total demand to be met from recovered HCFC–22 would equal 12,500 MT each year. This is approximately the amount EPA projected would be needed to meet the servicing demand in 2015. EPA is retaining this approach for 2011 in the interim final rule. Under this approach,

the allocations equal approximately 45,400 MT in 2011. These values, shown in the table below, are derived by subtracting 12,500 MT from the estimated demand each year. EPA will not issue HCFC–22 and HCFC–142b allowances for 2012 or later until a future rulemaking. Consistent with the 2009 Final Rule, EPA plans to reduce the allocation amount annually in future rulemakings to reflect the declining servicing demand.

	2010	2011
Estimated Demand (MT) ..	62,500	57,900
Total Allocation (MT)	50,000	45,400
Recovered Amount (MT) ..	12,500	12,500

As the total demand decreases, maintaining the supply of recovered HCFCs at a constant level results in recovered material comprising a greater proportion of the total demand each year. Under this approach, the percentage of the total demand to be met with recovered material will rise from 20 percent of total demand in 2010 to 21.6 percent in 2011, though the total amount of recovered material needed remains at 12,500 MT for both years. EPA still believes this is appropriate as it facilitates meeting the demand in 2015, of which at least 29 percent must be met with recovered material, but takes comment on whether demand for HCFC–22 has changed since the 2009 Final Rule was published. Additionally, EPA is taking comment on whether there is surplus HCFC–22 on the U.S. market. In particular, EPA is interested in learning more about: (1) The current amount of recovered HCFC–22 that is available for reclamation or reuse in another HCFC–22 system; (2) the amount of surplus HCFC–22 (virgin and reclaimed) in inventory; and (3) the amount of recovered HCFC–22 abroad awaiting import into the U.S. for reclamation and/or reuse. If new information shows a different amount of HCFC–22 should be allocated in future control periods to encourage reclamation and ensure a smooth transition, EPA will explore options to address this in a later proposed rule.

C. Allocations of HCFC–22 and HCFC–142b

EPA is revising the tables in 40 CFR 82 that together specify the production and consumption allowances available to allowance holders during specified control periods. The tables at sections 82.17 and 82.19 apportion baseline production allowances and baseline consumption allowances, respectively, to individual companies for individual HCFCs during a particular regulatory

period. Complementing these tables, the table at section 82.16 lists the percentage of baseline allocated to allowance holders for specific control periods. In the interim final rule, EPA is retaining this framework of complementary tables, revising them to reflect the Court's vacatur, responding to the Court's remand by making adjustments to the previous baselines consistent with the Court's ruling, and granting percentages of baselines in a manner that achieves the 2010 phaseout step and lays the groundwork for the next phaseout step in 2015.

In the 2009 Final Rule, the percent allocation for HCFC–22 for 2011 was 38.0 percent of baseline. In the interim final rule, the value is 32.0 percent. The percent allocation for HCFC–142b for 2011 was 0.47 percent of baseline in the 2009 Final Rule and is 4.9 percent of baseline in this interim final rule. These changes do not reflect a change in the total consumption allocation amounts for each substance, as the total allocation for HCFC–22 in 2011 remains approximately 45,400 MT (the same as the 2009 Final Rule), and the total allocation for HCFC–142b in 2011 remains at approximately 100 MT. Using the same percentage of baseline to allocate production allowances as consumption allowances, the total HCFC–22 production allocation is smaller than in the 2009 final rule by less than two percent. The lower amount is due to the change in company baselines to reflect the Court's decision on the 2008 inter-pollutant baseline transfers, and not a change in the methodology used to determine allowances. More information is available on this subject in Section V.C.2.

The 2009 Final Rule, which did not treat the 2008 transfers of HCFC–142b to HCFC–22 baseline allowances as carrying forward into the next regulatory period, had a total HCFC–22 consumption baseline of 119,384 MT. In this interim final rule, EPA is reflecting the baseline transfers in section 82.19 in accordance with the Court's decision. As a result, the aggregate HCFC–22 consumption baseline has increased to 141,865 MT. Since the aggregate HCFC–22 baseline is now higher due to the increase in the number of HCFC–22 baseline allowances for Arkema, Inc. and Solvay Fluorides, LLC, EPA is allocating a smaller percentage of the company-specific baselines than in the 2009 Final Rule to achieve the same total number of allowances. Thus, 45,400 MT of HCFC–22 consumption (the aggregate allocation amount in 2011) is equal to 38.0 percent of 119,384 MT (baseline) of HCFC–22 in the 2009

Final Rule, and 32.0 percent of 141,865 MT (baseline) in this interim final rule. The aggregate HCFC-22 production baseline is also increasing from 110,619 MT in the 2009 Final Rule to 129,093 MT in this interim final rule to reflect Arkema, Inc.'s transfer of HCFC-142b baseline production allowances to HCFC-22 baseline production allowances.

The opposite is true for HCFC-142b, which had a larger aggregate consumption baseline in the proposed rule (21,089 MT), but now has a smaller

baseline (2,047 MT) since EPA is accounting for inter-pollutant transfers from HCFC-142b to HCFC-22. Thus, 100 MT of HCFC-142b consumption allowances (the aggregate allocation amount in 2011) are equal to 0.47 percent of 21,089 MT of HCFC-142b in the 2009 Final Rule, and 4.9 percent of 2,047 MT in this interim final rule.

Aggregate HCFC-142b baseline production allowances are decreasing from 25,090 MT in the 2009 Final Rule to 9,444 MT in this interim final rule to

reflect Arkema, Inc.'s transfer of HCFC-142b baseline production allowances.

EPA is removing the vacated text relating to HCFC-22 and HCFC-142b from the tables in sections 82.16, 82.17, and 82.19; adding new production and consumption baselines for those substances for 2011 to the tables at sections 82.17 and 82.19; and adding new specified percentages of baseline for those substances to the table in section 82.16 for the 2011 control period.

TABLE 1—PHASEOUT SCHEDULE FOR CLASS II CONTROLLED SUBSTANCES IN 40 CFR 82.16

Control period	Percent of HCFC-141b	Percent of HCFC-22	Percent of HCFC-142b	Percent of HCFC-123	Percent of HCFC-124	Percent of HCFC-225ca	Percent of HCFC-225cb
2003	0	100	100				
2004	0	100	100				
2005	0	100	100				
2006	0	100	100				
2007	0	100	100				
2008	0	100	100				
2009	0	100	100				
2010	0	41.9	0.47	125	125	125	125
2011	0	32.0	4.9	125	125	125	125
2012	0			125	125	125	125
2013	0			125	125	125	125
2014	0			125	125	125	125

Consistent with the 2009 Final Rule, EPA is allocating different baseline percentages for HCFC-22 and HCFC-142b because EPA projects that the needs will differ for servicing air-conditioning and refrigeration appliances during the 2011 control period. As discussed in Section V.B.1., the analysis prepared for the 2009 Final Rule showed there will be a significantly greater need for HCFC-22 than for HCFC-142b during 2011. Based on the *Servicing Tail Report* and reporting information already required by EPA regulations, the needs for individual HCFCs are not uniform. EPA determined in the 2009 Final Rule that allocating the same percentage of baseline for HCFC-22 and HCFC-142b would result in too few allowances for HCFC-22 and too many allowances for HCFC-142b. While annual inter-pollutant transfers in accordance with section 82.23(b) could be used to transfer allowances of one HCFC for another on a temporary basis, EPA continues to believe it is not appropriate to rely on such transfers as a mechanism for large-scale corrections. Instead, EPA anticipates that the continued availability of annual, temporary inter-pollutant transfers will permit the market to self-correct for unforeseen changes in demand and allow entities to consider a range of options for their allowances. EPA seeks to avoid

unnecessary disruptions in the marketplace and to promote a smooth transition for society.

1. HCFC-22 Consumption Allowances for 2011

For 2011, EPA is allocating HCFC-22 consumption allowances to meet about 78 percent of the servicing need, assuming the remainder will be met by recovered HCFC-22 that is either reused, recycled, or reclaimed. This translates into approximately 45,400 MT (2,497 ODP-weighted MT), or 66 percent of the total HCFC consumption cap for the 2011 control period.

2. HCFC-22 Production Allowances for 2011

For purposes of the 2011 interim final rule, EPA is not revisiting its determination in the 2009 Final Rule to use the same percentages for production and consumption allocations—deriving the percentages based on estimated need for each individual HCFC. Therefore, this rule allocates 41,310 MT (2,272 ODP-weighted MT of the 3,884.25 ODP-weighted metric ton production cap) to HCFC-22 production in 2011. The 2011 aggregate allocation is 1.7 percent lower than the amount allocated in the 2009 Final Rule (41,310 MT in this Interim Final Rule vs. 42,035 MT in the 2009 Final Rule) because the aggregate amount of baseline production

allowances in this rulemaking did not increase by the same relative amount as aggregate baseline consumption allowances. Because Solvay did not transfer its HCFC-142b production allowances to HCFC-22 production allowances, consumption allowances are 18.8 percent higher in this rule, while production allowances are only 16.7 percent higher. The memo to the docket for this rulemaking (EPA-HQ-OAR-2010-1040) titled “HCFC-22 and HCFC-142b Allocation Adjustments: 2009 Final Rule vs. 2011 Interim Final Rule,” discusses the slight differences in allocation amounts in more detail.

While some allowance holders have encouraged EPA to increase the number of production allowances allocated in 2011, EPA is not allocating additional production allowances in this interim final rule for several reasons. First, EPA is relying on the existing record for the 2009 Final Rule, in which the Agency determined it was appropriate to allocate production and consumption allowances at the same percentage of baseline. EPA believes it is important to obtain public comment on this issue before changing course. Second, in the 2009 Final Rule, EPA stated that allocating the same percentage of baseline for production and consumption was “consistent with section 605(c) of the Clean Air Act, which requires that the phaseout

schedule for HCFC consumption be the same as that for HCFC production” (74 FR 66429). EPA has given further thought to this provision and is seeking public comment on its interpretation before any changes in policy. Third, EPA has not previously taken comment on whether there would be environmental implications associated with such a change. Given these three considerations, EPA believes it would not be appropriate to increase the production amount without providing notice and an opportunity to comment.

While this interim final rule contains the same allocation percentages for production and consumption, EPA welcomes comment on whether it should use different percentages to allocate HCFC-22 production and consumption allowances in 2011 and/or future control periods. From a policy perspective, EPA is interested in comments on whether an increase in the total number of HCFC-22 production allowances would result in greater total HCFC production, either in the U.S. or globally. EPA notes that production of 1 kilogram of an HCFC requires both a production allowance and a consumption allowance (82.15(a)(1),(2)). Thus, an increase in production allowances without a corresponding increase in consumption allowances does not automatically result in greater production. The most likely scenario is that an increase in production allowances would result in greater U.S. production for export. This is because as stated in § 82.20(a), “A person may obtain at any time during the control period * * * consumption allowances equivalent to the quantity of class II controlled substances that the person exported from the U.S. and its territories to a foreign state * * * when that quantity of class II controlled substance was produced in the U.S. * * * with expended consumption allowances.” In effect, current EPA regulations allow exporters to receive a refund of one consumption allowance for each kilogram they export if they show one consumption and one production allowance were expended for the material exported. Therefore, EPA would not expect an increase in production allowances to result in greater amounts of HCFCs being used in the U.S. EPA welcomes comment on whether an increase in the level of production allowances would result in more U.S. production, either for domestic use or for export, and whether any additional U.S. production for export would result in greater worldwide production of HCFCs.

From a legal perspective, EPA is interested in comments on whether

section 605(c) would preclude allocating a different percentage of baseline for production than for consumption. Section 605(c) states that EPA must “promulgate regulations phasing out the production * * * of class II substances in accordance with [section 605],” subject to any acceleration under section 606. It further states that EPA must “promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule * * * as is applicable to the phase-out and termination of production of class II substances under [Title VI].” EPA is considering three possible interpretations of the term “schedule” as referenced in section 605(c): (1) The schedule that appears on the face of section 605, which contains no deadlines until 2015; (2) the schedule that appears on the face of section 605, as accelerated under section 606; and (3) the specific allocation percentages or amounts established by EPA through rulemaking for each control period. EPA believes that the second interpretation is the most consistent with the statutory language and purpose.

In past actions, the Agency has accelerated the initial schedule in section 605 to reflect modifications to the Montreal Protocol phaseout schedule for HCFCs. Under the 2007 Montreal Adjustment (reflected in Decision XIX/6), the U.S. is obligated to reduce HCFC production and consumption 75 percent below its aggregate baseline by 2010. EPA is not proposing to increase production to an amount that would be inconsistent with that obligation. Instead, EPA is taking comment on whether to allow production to increase relative to consumption, without encroaching on the cap. Specifically, EPA is taking comment on whether to issue additional production allowances in the amount of 7,746 MT when compared to this interim final rule.

If EPA were to decide to increase production allowances in 2011, its preferred approach would be to decouple the percentage of baseline allocated for production from the percentage of baseline allocated for consumption. EPA would effectuate this change in its regulations by replacing the table at 40 CFR 82.16 with two tables. One would allocate 32 percent of baseline for consumption allowances in 2011. The other would allocate 38 percent of baseline for production allowances in 2011. This approach would still provide the petitioners in *Arkema v. EPA* the benefit of their 2008

baseline transfers while giving other companies with production baselines approximately the same number of production allowances as they received in the 2009 Final Rule. Compared to the 2009 Final Rule, the net result would be 7,020 MT (386 ODP-weighted MT) additional HCFC-22 production allowed in 2011 for a total of 49,055 MT (2,698 ODP-weighted MT). Under this scenario, the U.S. would be 1,021 ODP-weighted MT below the production cap and in compliance with its obligations under the Montreal Protocol. EPA is seeking comment on whether this increase would hinder the transition to the 2015 phaseout step, under which the U.S. is obligated to reduce HCFC production and consumption 90 percent below its aggregate baseline. EPA's preference is to continue to use the same percentages for production and consumption allocations. This is because EPA is concerned this action could increase U.S. production of HCFCs, might decrease the U.S.'s ability to transition to the 2015 stepdown under the Montreal Protocol, and potentially increase global production of HCFCs. Nevertheless, the Agency welcomes comment on this option for increasing 2011 and/or future HCFC-22 production allowances. After reviewing comments, EPA may either issue a supplemental allocation of production allowances for 2011 or leave the 2011 production allocation in this interim final rule unchanged.

3. HCFC-142b Allowances for 2011

Establishing HCFC-142b baseline allowances that take into account the 2008 inter-pollutant transfers discussed in Section II.D. results in 2,047 MT of aggregate baseline consumption allowances and 9,444 MT of aggregate baseline production allowances. Consistent with the 2009 Final Rule, EPA is allocating 100 percent of the projected servicing need for HCFC-142b identified in that rule: 100 MT (7 ODP-weighted MT) of consumption. To get to that level of consumption, EPA is allocating 4.9 percent of the aggregate consumption baseline, as reflected in the table at section 82.16. The aggregate allocation number for consumption is the same as in the 2009 Final Rule.

Using the same percentage (4.9 percent), EPA is allocating 463 MT (30.1 ODP-weighted MT) of HCFC-142b production allowances for 2011. The 2011 aggregate allocation for production is higher than the amount allocated in the 2009 Final Rule (463 MT in this interim final rule vs. 118 MT in the 2009 Final Rule). The allocated amount is 292 percent higher than in the 2009 Final Rule because the aggregate amount

of baseline HCFC-142b consumption allowances in this rulemaking decreased by a significantly larger amount than aggregate baseline HCFC-142b production allowances. Baseline consumption allowances are 90.3 percent lower in this rule, while baseline production allowances are only 62.4 percent lower. This occurred because Solvay did not transfer its HCFC-142b production allowances to HCFC-22 production allowances. This higher amount of calendar-year production does not affect the U.S.'s ability to meet its obligations under the Montreal Protocol. The memo to the docket for this rulemaking (EPA-HQ-OAR-2010-1040) titled "HCFC-22 and HCFC-142b Allocation Adjustments: 2009 Final Rule vs. 2011 Interim Final Rule," discusses the differences in exact allocation amounts in more detail.

4. How the Aggregate for HCFC-22 and HCFC-142b Translates Entity-by-Entity

EPA is allocating (1) approximately 45,400 MT of HCFC-22 consumption allowances, (2) 41,310 MT of HCFC-22 production allowances, (3) approximately 100 MT of HCFC-142b consumption allowances, and (4) 463 MT of HCFC-142b production allowances for 2011. However, EPA actually allocates allowances to individual companies (*i.e.*, legal entities).

Company-specific production and consumption baselines (also referred to as "baseline allowances") for HCFC-142b and HCFC-22 are listed at sections 82.17 and 82.19, respectively. The percentage of baseline each entity will receive in 2011 appears at section 82.16(a), as shown in Table 1 above.

Allowances allocated for individual control periods are called "calendar-

year allowances" to distinguish them from the baseline production or consumption. For 2011, EPA is apportioning production and consumption baselines for HCFC-22 and HCFC-142b on the same basis as in the 2009 Final Rule, except that EPA is making adjustments to reflect (1) The 2008 inter-pollutant transfers of baseline allowances deemed permanent by the Court, (2) inter-company, single-pollutant transfers of baseline allowances that occurred in 2010, and (3) changes in company names that occurred after the 2009 Final Rule was signed. Applying the approach described above, EPA is apportioning production and consumption baselines for HCFC-22 and HCFC-142b to the following entities in the following amounts:

TABLE 2—BASELINE PRODUCTION ALLOWANCES OF HCFC-22 AND HCFC-142B IN 40 CFR 82.17

Person	Controlled substance	Allowances (kg)
Arkema	HCFC-22	46,692,336
	HCFC-142b	484,369
DuPont	HCFC-22	42,638,049
	HCFC-22	37,378,252
Honeywell	HCFC-142b	2,417,534
	HCFC-22	2,383,835
MDA Manufacturing	HCFC-22	2,383,835
Solvay Solexis	HCFC-142b	6,541,764

TABLE 3—BASELINE CONSUMPTION ALLOWANCES OF HCFC-22 AND HCFC-142B IN 40 CFR 82.19

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC-22	279,366
	HCFC-22	302,011
Altair Partners	HCFC-22	48,637,642
	HCFC-142b	483,827
Carrier Corporation	HCFC-22	54,088
	HCFC-22	1,040,458
Coolgas Investment Property	HCFC-22	38,814,862
	HCFC-142b	52,797
DuPont	HCFC-22	40,068
	HCFC-22	35,392,492
H.G. Refrigeration Supply	HCFC-22	1,315,819
	HCFC-142b	2,546,305
Honeywell	HCFC-22	2,081,018
	HCFC-22	2,541,545
Mexichem Fluor Inc	HCFC-22	281,824
Kivlan & Company	HCFC-22	5,528,316
MDA Manufacturing	HCFC-22	381,293
Mondy Global	HCFC-22	45,979
National Refrigerants	HCFC-22	63,172
Refricenter of Miami	HCFC-22	37,936
Refricentro	HCFC-22	3,781,691
R-Lines	HCFC-142b	194,536
Saez Distributors	HCFC-22	14,865
Solvay Fluorides		
Solvay Solexis		
USA Refrigerants		

D. HCFC-141b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb Allowances

Other than adjustments for inter-company, single-pollutant transfers of baseline allowances, baselines and percentages of baseline allocated as calendar-year allowances for HCFC-141b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb are unchanged from the 2009 Final Rule. In the case of HCFC-141b, EPA is continuing to allocate 0 percent of baseline for U.S. consumption and production, consistent with 40 CFR 82.16(b).

E. Other HCFCs

As a result of EPA's allocation process, which is largely based on projected demand for HCFC-22 and HCFC-142b, minus an amount of HCFC-22 that is assumed to be reused, recycled, or reclaimed, the total allocation is lower than the aggregate HCFC cap under the Montreal Protocol. EPA recognizes that there could be some additional need for HCFCs not specifically included in this rule. While some niche applications in the U.S. use other HCFCs, such as HCFC-21, EPA is not aware of additional need for production or import of these substances at this time, as adequate amounts appear to be in inventory. However, EPA is not foreclosing the possibility of additional production or import for these niche uses. Also, some amount of HCFC-141b will likely continue to be produced or imported via the petition process during 2011. EPA believes there is sufficient room under the cap for such continued production and import. The current regulations at 40 CFR 82.15 ban the production and import of class II substances for which EPA has apportioned baseline production and consumption allowances in excess of allowances held by the producer or importer, but do not ban the production and import of class II substances for which EPA has not apportioned baseline production and consumption allowances. This rule does not alter the current regulations in that respect. The producer or importer of an HCFC that is not subject to the allowance system would be required to report to EPA consistent with the existing recordkeeping and reporting requirements. If necessary, EPA could amend the regulations to set and apportion baselines and issue

allowances for these HCFCs. Therefore, retaining room under the cap provides the benefit of accounting for unanticipated growth in HCFCs that do not have allocations or other unforeseen events. However, EPA is not reserving room under the cap for the above-described reasons. EPA is allocating allowances based on modeled demand for virgin and recovered material in preparation for the next major stepdown period under the Montreal Protocol in 2015.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" since it raises "novel legal or policy issues." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA did not conduct a specific analysis of the benefits and costs associated with this action. Many previous analyses provide a wealth of information on the costs and benefits of the U.S. HCFC phaseout including:

- The 1993 *Addendum to the 1992 Phaseout Regulatory Impact Analysis: Accelerating the Phaseout of CFCs, Halons, Methyl Chloroform, Carbon Tetrachloride, and HCFCs*.
- The 1999 Report *Costs and Benefits of the HCFC Allowance Allocation System*.
- The 2000 Memorandum *Cost/Benefit Comparison of the HCFC Allowance Allocation System*.
- The 2005 Memorandum *Recommended Scenarios for HCFC Phaseout Costs Estimation*.
- The 2006 ICR *Reporting and Recordkeeping Requirements of the HCFC Allowance System*.
- The 2007 Memorandum *Preliminary Estimates of the Incremental Cost of the HCFC Phaseout in Article 5 Countries*.
- The 2007 Memorandum *Revised Ozone and Climate Benefits Associated*

with the 2010 HCFC Production and Consumption Stepwise Reductions and a Ban on HCFC Pre-charged Imports.

A memorandum summarizing these analyses is available in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for HCFCs, and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. Because this rule is not subject to notice-and-comment rulemaking requirements, the RFA does not apply and the Agency is not required to conduct a regulatory flexibility analysis.

Nevertheless, in the spirit of the RFA, we have considered the economic impacts of this interim final rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This action will affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial Gas Manufacturing	325120	2869	Fluorinated hydrocarbon gases manufacturers and reclaimers.

Category	NAICS code	SIC code	Examples of regulated entities
Other Chemical and Allied Products Merchant Wholesalers.	422690	5169	Chemical gases and compressed gases merchant wholesalers.
Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	333415	3585	Air-conditioning equipment and commercial and industrial refrigeration equipment manufacturers.
Air-Conditioning Equipment and Supplies Merchant Wholesalers.	423730	5075	Air-conditioning (condensing unit, compressors) merchant wholesalers.
Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.	423620	5064	Air-conditioning (room units) merchant wholesalers.
Plumbing, Heating, and Air-Conditioning Contractors	238220	1711, 7623	Central air-conditioning system and commercial refrigeration installation; HVAC contractors.

After considering the economic impacts of this interim final rule on small entities, I certify this action will not have a significant economic impact on a substantial number of small entities as it relieves a regulatory ban on production and consumption that would otherwise apply in the wake of the Court's vacatur. EPA is continuing to allocate production and consumption allowances using the same approach described in the 2009 Final Rule with adjustments to reflect (1) 2008 inter-pollutant transfers of baseline allowances deemed permanent by the Court, (2) inter-company, single-pollutant transfers of baseline allowances that occurred in 2010, and (3) changes in company names that occurred after the 2009 Final Rule was signed. EPA is not modifying the recordkeeping or reporting provisions and thus is not increasing the burden to small businesses.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. First, UMRA does not apply to rules that are necessary for the implementation of international treaty obligations. This rule implements the 2010 milestone for the phaseout of HCFCs under the Montreal Protocol. Second, this action relieves the regulatory ban on production and consumption that would otherwise apply. This action will not have any significant direct impacts on State, local and tribal governments or private sector entities. Therefore, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action apportions production and consumption allowances and

establishes baselines for private entities, not small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, titled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action is expected to primarily affect producers, importers, and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as

defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," *Eur J Cancer* 1994; 30A: 1647–54; (2) Elwood JM Japson J. "Melanoma and sun exposure: an overview of published studies," *Int J Cancer* 1997; 73:198–203; (3) Armstrong BK, "Melanoma: childhood or lifelong sun exposure," In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. "Melanoma and Sunburn," *Cancer Causes Control*, 1994: 5:564–72; (5) Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," *Int J Cancer* 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," *Arch Dermatol* 1995; 131: 157–63; (7) Armstrong, DK. "How sun exposure causes skin cancer: an epidemiological perspective," *Prevention of Skin Cancer*. 2004. 89–116.

This action implements the U.S. commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the U.S. can take to complete the overall phaseout of ODS and further decrease

impacts on children's health from stratospheric ozone depletion.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule issues allowances for the production and consumption of HCFCs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal

executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the 2010 phaseout step increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action continues the implementation of the U.S. commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the U.S. can take to complete the overall phaseout of ODS and further lessen the adverse human health effects for the entire population.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the U.S.. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective August 5, 2011.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: July 29, 2011.

Lisa P. Jackson,
Administrator.

40 CFR part 82 is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Revise § 82.16(a) to read as follows:

§ 82.16 Phaseout schedule of class II controlled substances.

(a) In each control period as indicated in the following table, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

Control period	Percent of HCFC-141b	Percent of HCFC-22	Percent of HCFC-142b	Percent of HCFC-123	Percent of HCFC-124	Percent of HCFC-225ca	Percent of HCFC-225cb
2003	0	100	100	.....	.....	.....	.....
2004	0	100	100	.....	.....	.....	.....
2005	0	100	100	.....	.....	.....	.....
2006	0	100	100	.....	.....	.....	.....
2007	0	100	100	.....	.....	.....	.....
2008	0	100	100	.....	.....	.....	.....
2009	0	100	100	.....	.....	.....	.....
2010	0	41.9	0.47	125	125	125	125
2011	0	32.0	4.9	125	125	125	125
2012	0	.....	.....	125	125	125	125
2013	0	.....	.....	125	125	125	125
2014	0	.....	.....	125	125	125	125

* * * * *

3. Revise § 82.17 to read as follows:

§ 82.17 Apportionment of baseline production allowances for class II controlled substances.

The following persons are apportioned baseline production

allowances for HCFC-22, HCFC-141b, HCFC-142b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb, as set forth in the following table:

Person	Controlled substance	Allowances (kg)
AGC Chemicals Americas	HCFC-225ca	266,608
	HCFC-225cb	373,952
Arkema	HCFC-22	46,692,336
	HCFC-141b	24,647,925
DuPont	HCFC-142b	484,369
	HCFC-22	42,638,049
Honeywell	HCFC-124	2,269,210
	HCFC-22	37,378,252
	HCFC-141b	28,705,200
	HCFC-142b	2,417,534
MDA Manufacturing	HCFC-124	1,759,681
	HCFC-22	2,383,835
Solvay Solexis	HCFC-142b	6,541,764

3. Section 82.19 is revised to read as follows:

§ 82.19 Apportionment of baseline consumption allowances for class II controlled substances.

The following persons are apportioned baseline consumption

allowances for HCFC-22, HCFC-141b, HCFC-142b, HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb, as set forth in the following table:

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC-22	279,366
AGC Chemicals Americas	HCFC-225ca	285,328
	HCFC-225cb	286,832
Altair Partners	HCFC-22	302,011
Arkema	HCFC-22	48,637,642
	HCFC-141b	25,405,570
Carrier	HCFC-142b	483,827
	HCFC-124	3,719
Continental Industrial Group	HCFC-22	54,088
Coolgas, Inc	HCFC-141b	20,315
Coolgas Investment Property	HCFC-141b	16,097,869
	HCFC-22	1,040,458
Discount Refrigerants	HCFC-123	19,980
	HCFC-124	3,742
DuPont	HCFC-141b	994
	HCFC-22	38,814,862
H.G. Refrigeration Supply	HCFC-141b	9,049
	HCFC-142b	52,797
Honeywell	HCFC-123	1,877,042
	HCFC-124	743,312
ICC Chemical Corp	HCFC-22	40,068
	HCFC-22	35,392,492
ICOR	HCFC-141b	20,749,489
	HCFC-142b	1,315,819
Kivlan & Company	HCFC-124	1,284,265
	HCFC-141b	81,225
Mexichem Fluor Inc	HCFC-124	81,220
Mondy Global	HCFC-22	2,546,305
	HCFC-22	2,081,018
National Refrigerants	HCFC-22	2,541,545
	HCFC-22	281,824
Perfect Technology Center, LP	HCFC-22	5,528,316
	HCFC-123	72,600
Refricenter of Miami	HCFC-124	50,380
	HCFC-123	9,100
Refricentro	HCFC-22	381,293
	HCFC-22	45,979
R-Lines	HCFC-22	63,172
Saez Distributors	HCFC-22	37,936
Solvay Fluorides	HCFC-22	3,781,691
	HCFC-141b	3,940,115
Solvay Solexis	HCFC-142b	194,536
Tulstar Products	HCFC-141b	89,913
	HCFC-123	34,800
USA Refrigerants	HCFC-124	229,582
	HCFC-22	14,865

[FR Doc. 2011-19896 Filed 8-4-11; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

CG Docket No. 10-51; FCC 11-118]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts modifications to its certification process for all Internet-based telecommunications relay service (iTRS) providers to ensure that all entities seeking certification in the future—or currently certified entities seeking re-certification—are fully qualified to provide iTRS in compliance with its rules and requirements, to reduce waste, fraud and abuse, and to improve the Commission's oversight of these providers once they have been certified.

DATES: Effective September 6, 2011, except 47 CFR 64.606(a) (2), (g), (h) (2) and (3) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the Paperwork Reduction Act (PRA) modified information collection requirements must be submitted by the public, OMB and other interested parties on or before September 6, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Comments on the information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, via e-mail at PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau at (202) 559-5158 (VP), or e-mail: Gregory.Hlibok@fcc.gov. For additional information concerning the information collection requirements contained in this document, contact Cathy Williams at (202) 418-2918, or e-mail: Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Structure*

and Practices of the Video Relay Service Program, Second Report and Order (*Second Report and Order*), document FCC 11-118 adopted July 28, 2011, and released July 28, 2011, in CG Docket No. 10-51, adopting modifications to its certification process for all iTRS providers. The full text of FCC 11-118 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. FCC 11-118 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc. (BCPI), at Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI at its Web site, <http://www.bcpiweb.com>, or by calling 202-488-5300. FCC 11-118 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html#orders>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 11-118 contains modified information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

In document FCC 11-118, the Commission has assessed the effects of imposing various requirements on iTRS providers to obtain certification from the Commission in order to be eligible for compensation from the Interstate TRS Fund (Fund). The Commission has determined that any additional data filing requirements imposed by document FCC 11-118 on iTRS providers are reasonable and necessary in order to ensure compliance with the

Commission's rules. The Commission has taken steps to address the concerns of commenters stating that some of the Commission's proposed rules were overly burdensome. For example, the Commission initially proposed to require that a provider file a deed or lease for every service center operated. The Commission has modified this requirement in its final rule to allow for providers with more than five centers to submit a representative sampling of deeds and leases. In addition, the Commission has declined to adopt its proposed requirement for providers to submit documentation of all financing arrangements pertaining to the provision of iTRS. The Commission has also declined to adopt the requirement that providers submit copies of all subcontracting agreements for services not directly essential for the provision of iTRS. The Commission concludes that it has taken steps to further reduce the burdens on affected entities to apply for certification to receive compensation from the Fund for the provision of iTRS, and that the remaining filing requirements are not overly burdensome.

Congressional Review Act

The Commission will send a copy of document FCC 11-118 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In document FCC 11-118, the Commission modifies its process for certifying iTRS providers as eligible for payment from the Fund for their provision of iTRS, as proposed in the Commission's *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking (*VRS Practices Report and Order and Certification FNPRM*), document FCC 11-54, published at 76 FR 24393, May 2, 2011 and 76 FR 24437, May 2, 2011. In the *Certification FNPRM*, the Commission sought comment on ways to modify the current certification process to ensure that iTRS providers receiving certification are qualified to provide iTRS in compliance with the Commission's rules, and to eliminate waste, fraud and abuse through improved oversight of such providers.

Eligibility for Compensation From the TRS Fund

2. Under the Commission's current rules, an iTRS provider is eligible to provide relay services and receive compensation from the Fund if it is: (1)